

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08cv339
(3:06cr87)

DANNY BECKHAM,)
Petitioner,)
v.) O R D E R
UNITED STATES OF AMERICA,)
Respondent.)

THIS MATTER is before the Court on Petitioner's "Request to Expand Record to Include Additional Claims of Ineffective Assistance of Counsel Claims Once the Court Rules Upon Issue of Failure to File Requested Appeal Notice and Brief" filed October 6, 2008, (Doc. No. 7), and Petitioner's Notice of Appeal filed in his criminal case filed October 7, 2008 (Case No. 3:06cr87, Doc. No. 152: Notice of Appeal).

Petitioner seeks permission to amend his Motion to Vacate to add unspecified claims of ineffective assistance of counsel once the Court rules on his claim that his attorney failed to file an appeal when requested to do so. (Doc. No. 7: Motion at 1-2). Because the Government has filed responsive pleadings, (Doc. Nos. 4 and 5), Petitioner must have its consent or leave of court to amend his pleadings. Fed. R. Civ. P. 15 . Here, Petitioner has not specified the additional grounds for relief or supporting facts, Rules Governing Section 2255 Proceedings 2(b)(1), (2); therefore, the Court is without a basis to determine whether the proposed amendment would be proper.

At the same time Petitioner filed the motion to amend in his civil case, he filed a motion addressed to the Fourth Circuit seeking a "direct appeal" to overturn the judgment in the criminal

case. (Case No. 3:06cr87, Doc. No. 152: Notice of Appeal). Accordingly, this Court will stay the proceedings in Petitioner's civil case filed pursuant to 28 U.S.C. § 2255 in deference to the Fourth Circuit's decision on Petitioner's Notice of Appeal in the criminal case.

IT IS, THEREFORE, ORDERED that Petitioner's "Request to Expand Record to Include Additional Claims of Ineffective Assistance of Counsel Claims Once the Court Rules Upon Issue of Failure to File Requested Appeal Notice and Brief", (Doc. No. 7), is **DENIED**.

IT IS FURTHER ORDERED that this § 2255 case is stayed pending the Fourth Circuit's decision on Petitioner's appeal in his criminal case.

Signed: October 8, 2008



Robert J. Conrad, Jr.
Chief United States District Judge
